

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
GREENBELT DIVISION

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

2014 MAR 13 A 3:25

CLERK'S OFFICE  
AT GREENBELT

BRETT KIMBERLIN,  
Plaintiff,

v.

No. RWT 13 CV 2580  
RC

LYNN THOMAS, and  
PETER G. MALONE, aka  
KIMBERLINUNMASKED,  
Defendants.

**FIRST AMENDED COMPLAINT FOR DAMAGES FOR COPYRIGHT INFRINGEMENT**

Plaintiff Brett Kimberlin hereby complains that Defendant Lynn Thomas and Peter G. Malone, aka KimberlinUnmasked have violated copyrights owned or controlled by Plaintiff in violation of the Copyright Act and the Digital Millennium Copyright Act.

**JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights trademarks and unfair competition). This Court has personal jurisdiction over the Defendant because (i) Defendant committed the tortious conduct alleged in this Complaint in this State, and (ii) Defendant resides in this State and/or (iii) Defendant has engaged in substantial and not isolated business activity in this State. Moreover, Defendant, without Plaintiff's consent, intentionally and willfully distributed over the Internet copyrighted works of Plaintiff through a Blogger.com account owned by Google Inc., an Internet Service Provider that



does business and has a registered agent in this State and District.

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), because: (i) a substantial part of the events or omissions giving rise to the claims occurred in this District; and, (ii) the Plaintiff resides (and therefore can be found) in this District and resides in this State; additionally, venue is proper in this District pursuant 28 U.S.C. § 1400(a) (venue for copyright cases) because Plaintiff resides in the District.

### **PARTIES**

1. Plaintiff Brett Kimberlin resides in Bethesda, Maryland and is the Director of Justice Through Music, a 501c3 non profit dedicated to inspiring young people to engage in civic participation.
2. Defendants Lynn Thomas and Pater G. Malone aka KimberlinUnmasked are bloggers who have blogged using the name KimberlinUnmasked and are dedicated to attacking Plaintiff with false, and defamatory posts, pictures and graphics. These Defendants reside at 704 Viewpointe Dr., Saint Charles, IL 60174-4182

### **STATEMENT**

3. KimberlinUnmasked is what is called a "smear blog," dedicated to smearing Plaintiff in retaliation for his exercise of his constitutional right to speech, redress and assembly.



4. The owner of the KimberlinUnmasked has set up the site anonymously on a Google Blogspot server, and has set up a corresponding Twitter account called @KimberlinUnmask to promote his KimberlinUnmasked blog posts.
5. KimberlinUnmasked regularly posts defamatory statements about Plaintiff, accusing him of unfounded crimes and other nefarious activity. On August 30, 2013, Plaintiff filed suit in Montgomery County Circuit Court against KimberlinUnmasked for various torts, including defamation and invasion of privacy. See *Kimberlin v. Aaron Walker*, et al, No. Cv 380996.
6. Plaintiff is a musician, composer, and video/audio producer, who writes and records music about important social issues. Some of these songs are turned into music videos and placed on the Internet, including YouTube, for social commentary and education.
7. All of Plaintiff's music is copyrighted by Plaintiff. All of the videos created from those songs are copyrighted either by Plaintiff individually or by Justice Through Music, which he directs.
8. KimberlinUnmasked regularly copies photographs from these copyrighted videos and posts them on his site, without permission, compensation or consent of Plaintiff. KimberlinUnmasked alters some of these photographs by superimposing Plaintiff's face on to other backgrounds, for example in a Nazi uniform. Others he makes into collages using dozens to create an impression not intended by the original copyrighted photo.



9. On or about July 27, 2013, Plaintiff sent a demand to KimberlinUnmasked using the "Contact" form on his site to remove all copyrighted photos of Plaintiff from his site.
10. KimberlinUnmasked responded to Plaintiff's demand, by posting the following on his site on July 29, 2013: "Your time for telling people what to do is drawing to an end, Brett."
11. KimberlinUnmasked then posted additional copyrighted photographs on his site.
12. KimberlinUnmasked has posted copyrighted photographs on the following posts.

<http://kimberlinunmasked.blogspot.com/2013/08/brett-kimberlin-wants-us-to-take-down.html>

<http://kimberlinunmasked.blogspot.com/2013/07/notice-to-brett-kimberlin.html>

<http://kimberlinunmasked.blogspot.com/2013/07/brett-kimberlin-peace-order-hearing.html>

<http://kimberlinunmasked.blogspot.com/2013/07/brett-kimberlin-accuses-wife-of.html>

<http://kimberlinunmasked.blogspot.com/2013/05/brett-kimberlins-explanation-for-epoxy.html>

<http://kimberlinunmasked.blogspot.com/2013/05/brett-kimberlin-denied-involvement-in.html>

<http://kimberlinunmasked.blogspot.com/2013/05/brett-kimberlin-bombing-charges-same-as.html>

<http://kimberlinunmasked.blogspot.com/2013/05/brett-kimberlin-and-irs.html>

<http://kimberlinunmasked.blogspot.com/2013/05/shipley-gets-surprise.html>



<http://kimberlinunmasked.blogspot.com/2013/05/the-many-faces-of-brett-kimberlin.html>

<http://kimberlinunmasked.blogspot.com/2013/04/why-did-prosecutors-refuse-to-charge.html>

<http://kimberlinunmasked.blogspot.com/2013/04/brett-kimberlin-is-in-no-way-comparable.html>

<http://kimberlinunmasked.blogspot.com/2013/03/brett-kimberlin-doesnt-like-being-mocked.html>

<http://kimberlinunmasked.blogspot.com/2013/03/cavete-idus-martias.html>

<http://kimberlinunmasked.blogspot.com/2013/03/brett-kimberlin-still-pervert-racist.html>

<http://kimberlinunmasked.blogspot.com/2013/02/who-is-brett-kimberlin.html>

13. KimberlinUnmasked removed all signs of copyright from the photos used and distributed,
14. On one collage dated August 1, 2013, KimberlinUnmasked actually superimposed on a collage of copyrighted photographs that the photographs were the copyright of KimberlinUnmasked—"Copyright 2013 KimberlinUnmasked."  
<http://kimberlinunmasked.blogspot.com/2013/08/brett-kimberlin-wants-us-to-take-down.html>
15. KimberlinUnmasked used Plaintiff's photographs to add value to his blog, increase traffic to it, move its ranking up on search engines, and drive traffic to other sites with which he is associated in order to secure donations.



16. Plaintiff filed a motion in the state court suit for Google to provide all information related to the registrant of the KimberlinUnmasked Google Blogspot account. On or about November 9, 2013, Judge Alego from the Montgomery County Circuit Court ordered Google to provide that information which it did, showing that the Google gmail account, causalnexus.george@gmail.com registered that account.
17. Defendant Lynn Thomas has publicly stated on various online blogs that the causalnexus.george@gmail.com account is her email account.
18. Plaintiff then filed another motion in the state court to determine the identity of the person who registered the causalnexus.george@gmail.com account and Judge Burrell, on January 13, 2014, ordered Google to disclose that information to Plaintiff, which it did, showing that the email was registered by an IP address leading to Illinois.
19. Plaintiff also subpoenaed information from Twitter requesting the registrant of the KimberlinUnmask Twitter account and the IP addresses of the person who logged into that account to post tweets attacking Plaintiff and posting copyrighted photos. Twitter complied by providing Plaintiff with a long list of IP addresses, most leading to masked addresses using overseas Virtual Private Networks tied to Internet cyber criminal organizations. Dozens of the IP addresses, however, led back to an AT&T account in Illinois.
20. Plaintiff then subpoenaed the AT&T records and learned that those dozens of logins were made at an account registered to Peter G. Malone, who is the father of Defendant Lynn Thomas.



21. After Judge Alego ordered Google to disclose the account registrant for the Google Blogspot blog, KimberlinUnmasked moved the blog to an offshore account in the Netherlands hosted by a company called Ecatel, which supplies anonymous hosting to hackers, pornographers, identity thieves, and others who do not want to be identified.
22. KimberlinUnmasked used the new KimberlinUnmasked.com account to continue to violate Plaintiff's copyright by posting many more copyrighted photos, and assuming the false copyright of other photos. When Plaintiff complained and demanded removal, KimberlinUnmasked mocked Plaintiff and published more copyrighted photos.
23. KimberlinUnmasked published hundreds of blog posts and thousands of tweets about Plaintiff, including many that included copyrighted photos, all without permission and against Plaintiff's expressed wishes. These were available on the Internet until December 2013 on several accounts and until January 14, 2014, on other accounts.
24. In December 2013, Google suspended the KimberlinUnmasked blogspot account and blog. Twitter also suspended two KimberlinUnmasked accounts and removed copyrighted material.
25. In January 2014, the KimberlinUnmasked.com account was suspended.

**COUNT I**  
**REMOVAL AND ALTERATION OF COPYRIGHT**

26. Plaintiff re-alleges paragraphs 1-14 25 above.
27. KimberlinUnmasked, without consent, intentionally removed and altered Plaintiff's copyright notice and distributed the photographs, knowing that



Plaintiff's copyright notice had been removed or altered, knowing or having reasonable grounds to know that such removal or alteration would induce, enable, facilitate, or conceal a copyright infringement in violation of 17 USC 1202(b).

28. As a direct and proximate result of KimberlinUnmasked's wrongful conduct, Plaintiff has suffered damages and so is entitled to the remedies set forth in 17 USC 1203.

29. Specifically, Plaintiff is entitled to and seeks statutory damages pursuant to 17 USC 1203(c)(3)(B), and costs of litigation pursuant to 17 USC 1203 (b).

## **COUNT II FALSE COPYRIGHT**

30. Plaintiff re-alleges paragraphs 1- 25 above.

31. KimberlinUnmasked, without consent of Plaintiff or law, knowingly and with intent to induce, enable, facilitate or conceal infringement, provided copyright management information over photos used in the collage in the August 1, 2013 post, that is false, in violation of 17 USC 1202(a)(1).

32. KimberlinUnmasked intentionally and willfully falsely asserted copyright of the photos used in the August 1, 2013 post.

33. As a direct and proximate result of KimberlinUnmasked's wrongful conduct, Plaintiff has suffered damages and so is entitled to the remedies set forth in 17 USC 1203.

34. Specifically, Plaintiff is entitled to and seeks statutory damages pursuant to 17 USC 1203(c)(3)(B), and costs of litigation pursuant to 17 USC 1203 (b).



**COUNT III  
INTENTIONAL DISTRIBUTION OF FALSE COPYRIGHT**

35. Plaintiff re-alleges paragraphs 1- 25 above.
36. KimberlinUnmasked intentionally and willfully falsely asserted copyright of the photos used in the August 1, 2013 post and distributed those photographs on the Internet.
37. By distributing false copyright over photos used in the collage in the August 1, 2013 post, KimberlinUnmasked has violated 17 USC 1202(a)(2).
38. As a direct and proximate result of KimberlinUnmasked's wrongful conduct, Plaintiff has suffered damages and so is entitled to the remedies set forth in 17 USC 1203.
39. Specifically, Plaintiff is entitled to and seeks statutory damages pursuant to 17 USC 1203(c)(3)(B), and costs of litigation pursuant to 17 USC 1203 (b).

**COUNT IV  
COPYRIGHT INFRINGEMENT**

40. Plaintiff re-alleges paragraphs 1- 25 above.
41. KimberlinUnmasked did not have authorization of Plaintiff or the law to reproduce, distribute, display or create derivative works of the photographs on the KimberlinUnmasked blogspot account, the .com account, or the three Twitter accounts used by KimberlinUnmasked.
42. KimberlinUnmasked has not compensated Plaintiff for reproducing, displaying and distributing the photographs.
43. KimberlinUnmasked violated Plaintiff's rights under 17 USC 106, specifically his right to (1) reproduce the copyrighted work in copies; (2) prepare



derivative works based on the copyrighted work; (3) distribute copies of the copyrighted work to the public by whatever means, including for remuneration, and (4) display the copyrighted work publicly.

44. As a direct and proximate result of his wrongful conduct,

KimberlinUnmasked has realized and continues to realize value and benefits rightly belonging to Plaintiff. Accordingly, Plaintiff is entitled to and seeks an award of actual damages and profits pursuant to 17 USC 5004(b).

45. In the alternative, Plaintiff is entitled to and seeks statutory damages for

KimberlinUnmasked's infringement, including fees and costs, pursuant to 17 USC 504(c)(1) and 505.

46. The infringement by KimberlinUnmasked was willful and performed with

knowledge that the reproduction, display, and distribution of the photographs was unauthorized. Therefore, Plaintiff is entitled to the recovery of enhanced statutory damages pursuant to 17 USC 504(c)(2).

#### **COUNT V CONSPIRACY TO COMMIT COPYRIGHT INFRINGEMENT**

1. Plaintiff re-alleges paragraphs 1- 25 above.
2. KimberlinUnmasked conspired with others without authorization of Plaintiff or the law to reproduce, distribute, display or create derivative works of the photographs on the KimberlinUnmasked blogspot account, the .com account, or the three Twitter accounts used by KimberlinUnmasked.
3. KimberlinUnmasked and the conspirators have not compensated Plaintiff for reproducing, displaying and distributing the photographs.



4. KimberlinUnmasked and the conspirators violated Plaintiff's rights under 17 USC 106, specifically his right to (1) reproduce the copyrighted work in copies; (2) prepare derivative works based on the copyrighted work; (3) distribute copies of the copyrighted work to the public by whatever means, including for remuneration, and (4) display the copyrighted work publicly.
5. As a direct and proximate result of his wrongful conduct, KimberlinUnmasked and the conspirators have realized and continue to realize value and benefits rightly belonging to Plaintiff. Accordingly, Plaintiff is entitled to and seeks an award of actual damages and profits pursuant to 17 USC 5004(b).
6. In the alternative, Plaintiff is entitled to and seeks statutory damages for KimberlinUnmasked's and the conspirators' infringement, including fees and costs, pursuant to 17 USC 504(c )(1) and 505.
7. The infringement by KimberlinUnmasked and the conspirators was willful and performed with knowledge that the reproduction, display, and distribution of the photographs was unauthorized. Therefore, Plaintiff is entitled to the recovery of enhanced statutory damages pursuant to 17 USC 504(c)(2).

WHEREFORE, Plaintiff respectfully requests that the Court:

(A) Issue an order finding that Lynn Thomas and Peter G. Malone aka KimberlinUnmasked's unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act, 17 USC 101 et seq.;



(B) Permanently enjoin Defendants and all other persons who are in active concert or participation with KimberlinUnmasked from continuing to infringe Plaintiff's copyrighted works;

(B) Order that KimberlinUnmasked delete and permanently remove the digital media files relating to Plaintiff's works from each of the computers under Defendant's possession, custody or control;

(C) Order that KimberlinUnmasked delete and permanently remove the infringing copies of the works KimberlinUnmasked has on computers under KimberlinUnmasked's possession, custody or control;

(D) Order that KimberlinUnmasked pay Plaintiff all damages in under 17 USC 504(b); Alternatively, award the maximum statutory damages in the amount of \$30,000 for each infringement pursuant to 17 U.S.C. § 504(c)(1), or such other amount as may be proper pursuant to 17 USC 504;

(E) Award Plaintiff statutory damages in the amount of \$150,000 per infringed Work pursuant to 17 USC 504(a) and (c) or such other amount as may be proper pursuant to 17 USC 504;

(F) Award Plaintiff actual damages suffered for each violation of 17 USC 1202(a) and (b), pursuant to 17 USC 1203(c)(2), or such other amount as may be proper pursuant to 17 USC 1203;

(G) Award Plaintiff maximum statutory damages in the amount of \$25,000 for each violation of 17 USC 1202(a) and (b) pursuant to 17 USC 1203(c)(3)(B), or such other amount as may be proper pursuant to 17 USC 1203; and

(H) Grant Plaintiff any other and further relief this Court deems just and proper.

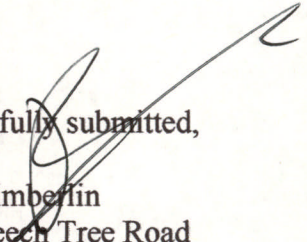


DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: March 13, 2014

Respectfully submitted,

  
Brett Kimberlin  
8100 Beech Tree Road  
Bethesda, MD 20817